

April 7, 2014

Bryan Burch
1022 G Street, Suite B
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-14-032

Dear Mr. Burch:

This letter responds to your request for advice regarding campaign-reporting provisions of the Political Reform Act (the “Act”).¹

QUESTIONS

You are the campaign treasurer for State Assembly candidate Jay Obernolte.

(1) The candidate is a 100% equity shareholder/owner of a corporation and would like to use the corporate plane for campaign travel. The plane, for tax purposes, is in the name of the corporation. Is this a contribution subject to limits?

(2) Secondly, how would the incurred costs of the plane and related expenses associated with using the airplane be reported? How would it be valued?

(3) Is it permissible to have the campaign reimburse the company for the costs associated with using the plane?

(4) If a candidate drives an automobile he/she owns (or one that is owned or leased by a company he/she owns) in campaign-related activities, are the expenses for these trips reportable as an in-kind campaign contribution? If so, how should the contribution be valued? It is the Committee’s understanding that incidental use of a candidate’s personal car for campaign purposes is not considered a contribution and is not reportable.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

CONCLUSION AND ANALYSIS

(1) A candidate is a 100% equity shareholder/owner of a corporation and would like to use the corporate plane for campaign travel. The plane, for tax purposes, is in the name of the corporation. Is this a contribution subject to limits?

Section 82015(c) provides:

“ ‘Contribution’ includes ... the candidate’s own money or property used on behalf of his or her candidacy other than personal funds of the candidate used to pay either a filing fee for a declaration of candidacy or a candidate statement prepared pursuant to Section 13307 of the Elections Code.”

Moreover, under the Act, the following apply:

- Any personal funds a candidate will use to promote his or her election shall be deposited into the campaign account prior to expenditure and all campaign expenditures shall be made from the account. (Section 85201(d).)
- The contribution limit provisions do not apply to a candidate’s contributions of his or her personal funds to his or her own campaign. (Section 85301(d); See *Buckley v. Valeo* (1976) 424 U.S. 1, 51, 96 S.Ct. 612, 651.)
- Personal contributions to a candidate’s campaign can come in the form of monetary donation, or the donations of goods or services. Under the Act, “nonmonetary” or “in-kind” contributions include goods and services provided free of charge to a candidate or committee, and goods and services provided at a discount from the fair market value to a candidate or committee (unless the same discount is given in the regular course of business to members of the public). (Section 82015(c); Regulation 18215(b)(3).)

Your question concerns nonmonetary contributions not from your personal funds, but from a corporation you solely own. In the past, we have advised that since a corporation is for many purposes an entity that is distinct from its individual members or stockholders, a candidate who owns a corporation must treat the corporation as a separate legal entity. Consequently, the assets of the candidate’s corporation were not considered the candidate’s “personal funds” for purposes of Section 85301(d) and are subject to the contribution limits of the Act. (See e.g., *Sremaniak* Advice Letter, No. A-03-092.)² However, the *Sremaniak* conclusion that the use of

² We note that in other contexts, a single shared contribution limit applies to both an individual and to his or her wholly-owned corporation when both make contributions to a candidate. The rationale is that when one individual “directs and controls” the contributions of another, the persons will be treated as a single person subject to one contribution limit. Thus, when an individual uses corporate funds to make a contribution, it is treated as a contribution from the individual. This rule has existed since 1976. (See *In re Kahn* (1976) 2 FPPC Ops. 151; see also, Section 85311 and Regulation 18215.1.)

one's own assets held by a wholly-owned corporation is subject to limits appears to be unsupported by controlling case law in the area.

“In *Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659, the Court soundly rejected a cap on a candidate's expenditure of personal funds to finance campaign speech, holding that a ‘candidate . . . has a First Amendment right to . . . vigorously and tirelessly . . . advocate his own election,’ and that a cap on personal expenditures imposes ‘a substantial,’ ‘clea[r,]’ and ‘direc[t]’ restraint on that right, id., at 52-53, 96 S. Ct. 612, 46 L. Ed. 2d 659. It found the cap at issue not justified by ‘[t]he primary governmental interest’ in ‘the prevention of actual and apparent corruption of the political process,’ id., at 53, 96 S. Ct. 612, 46 L. Ed. 2d 659....” (*Davis v. FEC* (2008) 554 U.S. 724, 743.)

In our view, a corporation wholly owned by you that makes contributions to you does not give rise to actual or apparent *quid pro quo* corruption of you or the political process. Thus, you are not prohibited from using your corporate plane, and the contribution of the use of the plane by your corporation is not limited, so long as you report the value as an in-kind contribution from yourself and your corporation.³ We apply this conclusion only to situations in which a candidate wholly owns the business entity that is making the contribution. We do not extend this conclusion to business entities in which the candidate has only partial ownership of the business's assets.

(2) *Secondly, how would the incurred costs of the plane and related expenses associated with using the airplane be reported? How would it be valued?*

The transportation is reported as an in-kind contribution. Under the Act, goods or services that are provided in-kind to a campaign committee are valued at their “fair market value.” (Section 82025.5.) The fair market value is the price at which the committee could obtain the goods or services on the open market. You must report the fair market value of the air transportation, which can be determined by using the equivalent commercial air rate or the charter rate divided by the number of passengers. (*Israel* Advice Letter, No. A-90-125.)

(3) *Is it permissible to have the campaign reimburse the company for the costs associated with using the plane?*

Yes, using the same valuation method in number (2) above. In order for use of the plane to not be reported as a contribution, the committee should pay the fair market value of the use of the plane within 45 days of its use. (Regulation 18526). Note that a reimbursement above fair market value would be considered a violation of the personal use statute that prohibits the personal use of campaign funds. (Sections 89510 – 89522.)

³ To the extent that the *Sremaniak* Advice Letter, No. A-03-092, the *Mitchell* Advice Letter, No. A-01-210, the *Newton* Advice Letter, No. A-90-113, or the *Woolstrum* advice letter, No. A-90-188 conclude that the contributions from a candidate's business that he owns 100 percent of are still subject to contribution limits, they are superseded.

(4) If a candidate drives an automobile he/she owns (or one that is owned or leased by a company he/she owns) in campaign-related activities, are the expenses for these trips reportable as an in-kind campaign contribution? If so, how should the contribution be valued? It is the Committee's understanding that incidental use of a candidate's personal car for campaign purposes is not considered a contribution and is not reportable.

With respect to incidental use of a candidate's personal vehicle in connection with campaign activity, we have stated that this incidental use of a personal car need not be reported. If the use of the personal vehicle is more than incidental, use of it shall be reported as an in-kind contribution. However, use of an airplane for campaign purposes, being an unusual and relatively expensive service, is distinguishable from use of a vehicle and is not considered incidental personal use.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: John W. Wallace
Assistant General Counsel
Legal Division

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